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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/667,489	09/22/2000	Robin Callan	100070.402	1934
7590 02/09/2005				
Seed Intellectual Property Law Group PLLC Suite 6300 701 Fifth Avenue Seattle, WA 98104-7092			EXAMINER BIANCO, PATRICIA	
			ART UNIT 3762	PAPER NUMBER

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/667,489

Applicant(s)

CALLAN ET AL.

Examiner

Patricia M Bianco

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5, 7-9 and 36-40 is/are pending in the application.
- 4a) Of the above claim(s) 5 and 7-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: Detailed Action.

DETAILED ACTION

Response to Amendment

In the amendment filed November 8th, 2004, Applicant cancelled claim s 10-35 and added new claims 36-40. Claims 5, 7-9, & 36-40 remain pending. Claims 5 and 7-9 remain withdrawn to non-elected inventions.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims **36-40 are rejected** under 35 U.S.C. 102(b) as being anticipated by Ahmad et al. (WO 92/11046). Ahmed et al. disclose a dialysate solution for use in treating patients suffering from kidney failure via dialysis treatment. The dialysate is made according to the needs of the patient undergoing treatment and comprises a mixture of water with about 2.0 to about 3.5 mEq/L of calcium, about 0 to about 1.5 mEq/L of magnesium, about 2 to about 12 mEq/L of citric acid (i.e. citrate), about 0 to about 130 mEq/L to about 150 mEq/L sodium, about 90 to about 120 mEq/L (i.e. sodium chloride) and about 45 mEq/L of bicarbonate. Ahmad further discloses that the dialysate solution may include salts comprising an anion and a cation, wherein the anion may be acetate or lactate. Ahmad further discloses that the method employs a hemodialyzer (i.e. dialyzer) as part of the blood circuit.

Response to Arguments

Applicant's arguments filed November 8th, 2004 have been fully considered but they are not persuasive. Applicant argues that Ahmad is not prior art under 35 USC 102(b) because it fails to teach a dialysate composition that "requires the presence of magnesium." Applicant further argues that "Ahmad optionally require magnesium" and points to claim 4 that states magnesium is of a concentration "from about 0 to about 1.5 mEq/L" and that "Ahmed can not contain citrate at a concentration level *greater* than 12 mEq/L" as required. The Examiner respectfully disagrees with the above characterization that Ahmad does not teach the required concentrations of magnesium and citrate. The MPEP 2131.03 sets forth that prior art that teaches a range within, overlapping, or touching the claimed range anticipates the range. In the instant case, Ahmad sets forth ranges of magnesium to be "from about 0 to about 1.5 mEq/L" and of citrate to be "from about 2 to about 12 mEq/L" of citrate (i.e. citric acid). With respect to the characterization that Ahmad cannot be greater than 12 mEq/L, the examiner respectfully disagrees. "About 12" is widely accepted to mean some degree greater than 12. With respect to the characterization that Ahmad's "from about 0mEq/L to 1.5 mEq/L" of magnesium results in an optional and not require presence of magnesium, the examiner also respectfully disagrees. "About 0" does not necessarily mean zero or no presence of magnesium. It is widely accepted that "about 0" means at least some degree greater than 0. Clearly these ranges teach a range within, overlapping, or touching the claimed ranges.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia M Bianco whose telephone number is (571) 272-4940. The examiner can normally be reached on Monday to Friday 9:00-6:30, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

February 4th, 2005

Patricia M Bianco
Primary Examiner
Art Unit 3762


PATRICIA BIANCO
PRIMARY EXAMINER